

13-34a-101. Title.

- (1) This chapter is known as "Utah Postsecondary School State Authorization Act."
- (2) This part is known as "General Provisions."

Enacted by Chapter 360, 2014 General Session

13-34a-102. Definitions.

As used in this chapter:

- (1) "Accredited institution" means a postsecondary school that is accredited by an accrediting agency.
- (2) "Accrediting agency" means a regional or national private educational association that:
- (a) is recognized by the United States Department of Education;
 - (b) develops evaluation criteria; and
 - (c) conducts peer evaluations to assess whether a postsecondary school meets the criteria described in Subsection (2)(b).
- (3) "Agent" means a person who:
- (a) (i) owns an interest in a postsecondary school; or
 - (ii) is employed by a postsecondary school; and
 - (b) (i) enrolls or attempts to enroll a Utah resident in a postsecondary school;
 - (ii) offers to award an educational credential for remuneration on behalf of a postsecondary school; or
 - (iii) holds oneself out to Utah residents as representing a postsecondary school for any purpose.
- (4) "Certificate of postsecondary state authorization" means a certificate issued by the division to a postsecondary school in accordance with the provisions of this chapter.
- (5) "Division" means the Division of Consumer Protection.
- (6) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letter of designation, mark, or series of letters, numbers, or words that represent enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an educational program.
- (7) "Intentional violation" means a violation of a provision of this chapter that occurs or continues after the division, the attorney general, a county attorney, or a district attorney gives the violator written notice, delivered by certified mail, that the violator is or has been in violation of the provision.
- (8) "Operate" means to:
- (a) maintain a place of business in the state;
 - (b) conduct significant educational activities within the state; or
 - (c) provide postsecondary education to a Utah resident that:
 - (i) is intended to lead to a postsecondary degree or certificate; and
 - (ii) is provided from a location outside the state by correspondence or telecommunications or electronic media technology.
- (9) "Operating history" means a report, written evaluation, publication, or other documentation regarding:

- (a) the current accreditation status of a postsecondary school with an accrediting agency; and
- (b) an action taken by an accrediting agency that:
 - (i) places a postsecondary school on probation;
 - (ii) imposes disciplinary action against a postsecondary school; or
 - (iii) requires a postsecondary school to take corrective action.
- (10) "Ownership" means:
 - (a) the controlling interest in a postsecondary school; or
 - (b) if an entity holds the controlling interest in the postsecondary school, the controlling interest in the entity that holds the controlling interest in the postsecondary school.
- (11) "Postsecondary education" means education or educational services offered primarily to individuals who:
 - (a) have completed or terminated their secondary or high school education; or
 - (b) are beyond the age of compulsory school attendance.
- (12) (a) "Postsecondary school" means a person that provides or offers educational services to individuals who:
 - (i) have completed or terminated secondary or high school education; or
 - (ii) are beyond the age of compulsory school attendance.
 - (b) "Postsecondary school" does not include an institution that is part of the state system of higher education under Section 53B-1-102.
- (13) "Private postsecondary school" means a postsecondary school that is not a public postsecondary school.
- (14) "Public postsecondary school" means a postsecondary school:
 - (a) established by a state or other governmental entity; and
 - (b) substantially supported with government funds.

Enacted by Chapter 360, 2014 General Session

13-34a-103. Duties of the division.

- (1) The division shall administer and enforce the provisions of this chapter.
- (2) In administering this chapter, the division shall:
 - (a) receive and review completed registration forms in accordance with the provisions of this chapter;
 - (b) develop, maintain, and make available to the public a list of postsecondary schools that have a current, valid certificate of postsecondary state authorization;
 - (c) adopt a fee schedule in accordance with Section 63J-1-504 to cover the cost of processing a registration form and issuing a certificate of postsecondary state authorization; and
 - (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, make rules governing:
 - (i) the content and form of a registration form;
 - (ii) the filing and review procedures relating to a registration form submitted under this chapter;
 - (iii) the filing and review of complaints filed with the division under this chapter;
 - (iv) the denial, suspension, or revocation of a certificate of postsecondary school

state authorization; and

- (v) enforcement of the provisions of this chapter.

Enacted by Chapter 360, 2014 General Session

13-34a-104. Authority to execute interstate reciprocity agreement -- Rulemaking.

(1) The division may execute an interstate reciprocity agreement that:

(a) is for purposes of state authorization under 34 C.F.R. Sec. 600.9; and

(b) is for the benefit of:

(i) postsecondary schools in the state; or

(ii) (A) postsecondary schools in the state; and

(B) institutions that are part of the state system of higher education under Section 53B-1-102.

(2) If the division executes an interstate reciprocity agreement described in Subsection (1):

(a) except as provided by division rule, the provisions of this chapter do not apply to a postsecondary school that obtains state authorization under the reciprocity agreement; and

(b) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules relating to:

(i) the standards for granting a postsecondary school state authorization under a reciprocity agreement;

(ii) any filing, document, or fee required for a postsecondary school to obtain authorization under a reciprocity agreement; and

(iii) penalties if a postsecondary school fails to comply with the rules that the division makes under this Subsection (2).

(3) If the division executes an interstate reciprocity agreement described in Subsection (1) that includes institutions that are part of the state system of higher education under Section 53B-1-102, the State Board of Regents may make rules that:

(a) implement the reciprocity agreement; and

(b) relate to institutions that are part of the state system of higher education under Section 53B-1-102.

Enacted by Chapter 360, 2014 General Session

13-34a-201. Title.

This part is known as "State Authorization Procedures."

Enacted by Chapter 360, 2014 General Session

13-34a-202. State authorization -- Certificate of postsecondary state authorization.

(1) A postsecondary school that operates in the state obtains state authorization for purposes of 34 C.F.R. Sec. 600.9 if the postsecondary school obtains a certificate of postsecondary state authorization under this chapter.

(2) A postsecondary school may obtain state authorization in a manner different from the manner described in Subsection (1) if the alternative manner is accepted by the United States Department of Education.

(3) (a) A certificate of postsecondary state authorization is not an endorsement or approval of a postsecondary school by the division or the state.

(b) A postsecondary school may not represent that a certificate of postsecondary state authorization is an endorsement or approval by the division or the state.

Enacted by Chapter 360, 2014 General Session

13-34a-203. Nonprofit postsecondary school -- Procedure to obtain certificate of postsecondary state authorization.

(1) The division shall, in accordance with the provisions of this section, issue a certificate of postsecondary state authorization to a postsecondary school that:

- (a) is a nonprofit postsecondary school; and
- (b) has operated as a nonprofit for at least 20 years.

(2) To obtain a certificate of postsecondary state authorization under this section, a postsecondary school shall:

- (a) submit a completed registration form to the division that:
 - (i) for a nonprofit, private postsecondary school, includes:
 - (A) a copy of the private postsecondary school's articles of incorporation;
 - (B) documentation from the United States Internal Revenue Service that demonstrates that the private postsecondary school has nonprofit status, and that the private postsecondary school has had nonprofit status for at least 20 consecutive years from the day on which the private postsecondary school submits the completed registration form; and
 - (C) satisfactory documentation that the private postsecondary school has complied with the complaint process requirements described in Section 13-34a-206; or
 - (ii) for a nonprofit, public postsecondary school, includes:
 - (A) documentation sufficient to demonstrate that the public postsecondary school has operated as a nonprofit for at least 20 consecutive years from the day on which the public postsecondary school submits the completed registration form; and
 - (B) satisfactory documentation that the public postsecondary school has complied with the complaint process requirements described in Section 13-34a-206; and

(b) pay a nonrefundable fee, established by the division, in accordance with Subsection 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the certificate of postsecondary state authorization.

(3) The division shall develop and make available to the public:

- (a) a registration form for nonprofit, private postsecondary schools, as described in Subsection (2)(a)(i); and
- (b) a registration form for nonprofit, public postsecondary schools, as described in Subsection (2)(a)(ii).

(4) The division shall deposit money that the division receives under Subsection (2)(b) into the Commerce Service Account, created in Section 13-1-2.

(5) If there is a change in circumstance that may affect a postsecondary school's status under this section, the postsecondary school shall notify the division in writing of the change within 30 days after the day on which the change occurs.

(6) A certificate of postsecondary state authorization issued under this section:

(a) establishes a postsecondary school by name as an educational institution, as described in 34 C.F.R. Sec. 600.9(a)(1)(i);

(b) makes a postsecondary school independent of the state system of higher education; and

(c) authorizes a postsecondary school to operate educational programs in the state that are beyond secondary education, including programs that lead to a degree or certificate.

Enacted by Chapter 360, 2014 General Session

13-34a-204. Postsecondary school -- Procedure to obtain certificate of postsecondary state authorization.

(1) The division shall, in accordance with the provisions of this section, issue a certificate of postsecondary state authorization to a postsecondary school.

(2) To obtain a certificate of postsecondary state authorization under this section, a postsecondary school shall:

(a) submit a completed registration form to the division that includes:

(i) proof of current accreditation from the postsecondary school's accrediting agency;

(ii) proof that the postsecondary school is fiscally responsible and can reasonably fulfill the postsecondary school's financial obligations, including:

(A) a copy of an audit of the postsecondary school's financial statements, with all applicable footnotes, including a balance sheet, an income statement, a statement of retained earnings, and a statement of cash flow, that was performed by a certified public accountant;

(B) at the postsecondary school's election, a copy of an audit of the postsecondary school's parent company's financial statements, with all applicable footnotes, including a balance sheet, an income statement, a statement of retained earnings, and a statement of cash flow, that was performed by a certified public accountant; and

(C) a copy of all other financial documentation that the postsecondary school provided to the postsecondary school's accrediting agency since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer;

(iii) proof of good standing in the state where the postsecondary school is organized;

(iv) the postsecondary school's operating history with the postsecondary school's accrediting agency since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer;

(v) the number of Utah residents who enrolled in the postsecondary school since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer;

(vi) satisfactory documentation that the postsecondary school has complied with the complaint process requirements described in Section 13-34a-206;

(vii) (A) the number of complaints that a Utah resident has filed against the postsecondary school since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer; and

(B) upon request, includes copies of the complaints described in Subsection (2)(a)(vii)(A);

(viii) a disclosure that states whether the postsecondary school or an owner, officer, director, or administrator of the postsecondary school has been:

(A) convicted of a crime;

(B) subject to an order issued by a court; or

(C) subject to an order issued by an administrative agency that imposed disciplinary action; and

(ix) a notarized personal verification by the owner or a responsible officer of the postsecondary school that the information provided under this Subsection (2)(a) is complete and accurate; and

(b) pay a nonrefundable fee, established by the division, in accordance with Subsection 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the certificate of postsecondary state authorization.

(3) The division shall develop and make available to the public a registration form described in Subsection (2)(a).

(4) The division shall deposit money that the division receives under Subsection (2)(b) into the Commerce Service Account, created in Section 13-1-2.

(5) If a postsecondary school maintains more than one physical campus in the state, the postsecondary school shall file a separate registration form for each physical campus in the state.

(6) (a) A certificate of postsecondary state authorization issued under this section is not transferrable.

(b) (i) If a postsecondary school's ownership or governing body changes after the postsecondary school obtains a certificate of postsecondary state authorization under this section, the postsecondary school shall submit a new completed registration form in accordance with Subsection (2) within 60 days after the day on which the change in ownership or governing body occurs.

(ii) If a postsecondary school fails to timely comply with the requirements described in Subsection (6)(b)(i), the postsecondary school's certificate of postsecondary state authorization immediately and automatically expires.

(c) If there is a change in circumstance that may affect a postsecondary school's status under this section, the postsecondary school shall notify the division in writing of the change within 30 days after the day on which the change occurs.

(7) A certificate of postsecondary state authorization issued under this section

expires one year after the day on which the certificate of postsecondary state authorization is issued.

Enacted by Chapter 360, 2014 General Session

13-34a-205. Background checks.

(1) The division may require an owner, officer, director, administrator, faculty member, staff member, or other agent of a postsecondary school that applies for or holds a certificate of postsecondary state authorization to:

- (a) submit a fingerprint card in a form acceptable to the division; and
- (b) consent to a criminal background check by:
 - (i) the Federal Bureau of Investigation;
 - (ii) the Utah Bureau of Criminal Identification; or
 - (iii) another agency of any state that performs criminal background checks.

(2) The postsecondary school or the postsecondary school's owner, officer, director, administrator, faculty member, staff member, or other agent who is subject to the background check shall pay the cost of:

- (a) the fingerprint card described in Subsection (1)(a); and
- (b) the criminal background check.

Enacted by Chapter 360, 2014 General Session

13-34a-206. Complaints -- Information for students and prospective students.

(1) A postsecondary school shall provide each student or prospective student written information regarding how to file a complaint against the postsecondary school with the division, the postsecondary school's accrediting agency, and the postsecondary school's approval or licensing entity.

(2) To satisfy the requirements described in Subsection (1), a postsecondary school may place a conspicuous link on the postsecondary school's website that links to:

- (a) the contact information of each entity described in Subsection (1); or
- (b) a third party's website that states the contact information for each entity described in Subsection (1).

(3) The division shall establish a process for reviewing and responding to complaints that the division receives under this chapter.

Enacted by Chapter 360, 2014 General Session

13-34a-207. Discontinuance of operations.

(1) If a postsecondary school ceases to operate, at least 30 days before the day on which the postsecondary school ceases to operate, the postsecondary school shall give the division written notice that includes:

- (a) the date on which the postsecondary school will cease to operate; and
- (b) for an accredited institution, a written certification, signed by the postsecondary school's owner or officer, that the postsecondary school has complied

with the postsecondary school's accrediting agency's closure requirements.

(2) After a postsecondary school submits a written notice described in Subsection (1), the postsecondary school may not recruit or enroll new students in the state.

Enacted by Chapter 360, 2014 General Session

13-34a-301. Title.

This part is known as "Enforcement."

Enacted by Chapter 360, 2014 General Session

13-34a-302. Denial, suspension, or revocation of certificate of postsecondary state authorization.

(1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may deny, suspend, or revoke a certificate of postsecondary state authorization if:

(a) for a certificate of postsecondary state authorization issued under Section 13-34a-203, the postsecondary school:

(i) fails to comply with a requirement described in Section 13-34a-203;
(ii) omits a material fact from the postsecondary school's completed registration form; or

(iii) includes a material fact in the postsecondary school's completed registration form that is incomplete, false, inaccurate, or misleading; or

(b) for a certificate of postsecondary state authorization issued under Section 13-34a-204:

- (i) the denial, suspension, or revocation is in the public interest; and
- (ii) the postsecondary school:
 - (A) fails to meet a requirement described in Section 13-34a-204;
 - (B) submits a registration form or any supporting documentation that is incomplete, false, inaccurate, or misleading;
 - (C) grants an educational credential to an individual that the individual did not earn;
 - (D) violates a provision of this chapter or a rule made under this chapter;
 - (E) is the subject of an order issued by a court or an administrative agency that includes a finding or admission of fraud, breach of fiduciary duty, or misrepresentation, or behavior that lacked moral integrity, truthfulness, or mental competence;
 - (F) has been convicted of a crime of moral turpitude;
 - (G) fails to give the division information that the division requests in connection with a certificate of postsecondary state authorization; or
 - (H) fails to timely pay a fine imposed under this chapter.

(2) For a postsecondary school that obtains a certificate of postsecondary state authorization under Section 13-34a-204, the division may place reasonable requirements on the postsecondary school if:

- (a) the requirement protects student interests; and
- (b) the postsecondary school engaged in any of the behavior described in

Subsection (1)(b)(ii).

Enacted by Chapter 360, 2014 General Session

13-34a-303. Right to rescind.

If a postsecondary school's certificate of postsecondary state authorization is revoked under Subsection 13-34a-302(2), a student who enrolled in the postsecondary school in reliance upon the postsecondary school's possession of a valid certificate of postsecondary state authorization may rescind any enrollment agreement and obtain a full refund from the postsecondary school for any tuition, fees, or other charges that the student paid to the postsecondary school.

Enacted by Chapter 360, 2014 General Session

13-34a-304. Violations.

A postsecondary school violates this chapter if:

(1) the postsecondary school fails to comply with a provision of this chapter or a rule made under this chapter; or

(2) for a postsecondary school that submits a registration form under Section 13-34a-204, the postsecondary school:

(a) intentionally omits a material fact from the postsecondary school's registration form; or

(b) includes a material fact in the postsecondary school's registration form that the postsecondary school knows or should have known is false, deceptive, inaccurate, or misleading.

Enacted by Chapter 360, 2014 General Session

13-34a-305. Enforcement.

(1) The division may, in accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act:

(a) investigate a postsecondary school, in response to a complaint or on the division's own initiative, to verify compliance with the provisions of this chapter; or

(b) initiate an adjudicative proceeding to enforce compliance with the provisions of this chapter.

(2) (a) The division may refer an alleged violation of a provision of this chapter to the attorney general, a county attorney, or a district attorney.

(b) The attorney general, county attorney, or district attorney shall investigate the alleged violation, and, following the investigation, may file a civil or criminal action in district court to:

(i) enjoin the defendant from further violation of the chapter; and

(ii) impose the applicable penalties described in Section 13-34a-306.

(3) Nothing in this chapter prevents a postsecondary school from performing an internal investigation.

Enacted by Chapter 360, 2014 General Session

13-34a-306. Penalties.

(1) In an adjudicative proceeding under Subsection 13-34a-305(1) or in a district court action under Subsection 13-34a-305(2), the division or the district court may impose a fine of up to:

(a) \$1,000 for each violation of this chapter that is not an intentional violation;
and

(b) \$5,000 for each intentional violation.

(2) The division shall deposit any money the division receives under Subsection (1) into the Consumer Protection Education and Training Fund, created in Section 13-2-8.

(3) A violation of a provision of this chapter is a violation of Section 13-11-4.

(4) An intentional violation is a class B misdemeanor.

Enacted by Chapter 360, 2014 General Session